

A regional training calendar will be published to inform the acquisition community when the Product Manager Acquisition, Logistics and Technology Enterprise Systems and Services (PM ALTESS) trainers will be on-site to conduct training. The VIS team will work closely with ASAALT proponents and PEO functional advocates to allocate and prioritize training. PM ALTESS VIS user account distribution is as follows:

User Community	Quantity
U.S. Army Materiel Command	1,000
U.S. Army Test and Evaluation Command	500
HQDA	500
Joint PEO Chemical and Biological Defense	1,000
PEO Ammunition	1,000
PEO Missiles and Space	1,000
PEO Aviation	1,000
PEO Command, Control and Communications Tactical	1,000
PEO Combat Support and Combat Service Support	1,000
PEO EIS	1,000
PEO Ground Combat Systems	1,000
PEO Intelligence, Electronic Warfare and Sensors	1,000
PEO Soldier	1,000
PEO Simulation, Training and Instrumentation	1,000
U.S. Army Research, Development and Engineering Command	500
Reserve	1,000
Other users	500

The Acquisition Information Management (AIM) system will be used to track user requests of the VIS components. The AIM Web site address is <https://aim.altess.army.mil>. Non-AIM users will have to apply for an AIM account and request access to the VIS components. Current AIM users will request access through the MyAIM link. Once the user's account is created, the VIS components can be accessed via the AIM Web site or by going to <https://vportal.altess.army.mil/vis>.

PM ALTESS was granted an Interim Authority to Operate for the VIS system March 14, 2005, and is working toward an Authority to Operate. The VIS Oracle COTS collaboration products were certified by the Joint Interoperability Test Command July 14, 2004.

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## Contracting Community Highlights



In *Army AL&T* Magazine's "Contracting Community Highlights" section, each feature article is intended to provide in-depth information relative to a contracting organization, mission or process. This issue's feature article, "Bundling Contract Requirements," gives an in-depth overview of "bundling" requirements and their legal bases, when the requirements apply to an acquisition, and courses of action. Roger Neds, Chief General Counsel, Army Contracting Agency (ACA) Northern Region Headquarters, provides this article as an instructive tool on this concept.

In addition to the feature, we provide news from a number of our contracting organizations, such as announcing the winners of the General Services Administration Ida Ustad Award for Excellence in Acquisition and California's Employer of the Year Award. This issue, our regular "DAR Council Corner" provides a list of *Army Defense Acquisition Regulation* and *Federal Acquisition Regulation* representatives.

We appreciate the continued support from the field in providing material to submit for publication, and we hope you find the submissions as informative and interesting as we do. If you need more information on any of the topics presented, call (703) 604-7107 or e-mail [ann.scotti@hqda.army.mil](mailto:ann.scotti@hqda.army.mil) for the pertinent contact information.

### Ms. Tina Ballard

Deputy Assistant Secretary of the Army  
(Policy and Procurement)

## Bundling Contract Requirements

*Roger Neds*

In virtually every major procurement on which we advise, there is some acquisition aspect where the customer has consolidated requirements in the contract vehicle. This consolidation, or “bundling,” has been a great source of political concern resulting in legislative and regulatory changes. Consequently, this area continues to confuse our customers and frustrate everyone on the acquisition team. This article provides an overview of the three different bundling requirements and their legal bases, the particular acquisition circumstances in which they apply and potential courses of action in an effort to explain and advise our customers on this often confusing concept.

### Small-Business Bundling

The first requirement concerning bundling stems from the *Small Business Act (SBA)*. *Federal Acquisition Regulation (FAR)* Part 2.101(b) states that bundling occurs when two or more requirements that were procured under separate smaller contracts are consolidated into a solicitation for a single contract that is unsuitable for award to a small-business concern. Under this definition, a requirement is not bundled if it had been previously acquired as a consolidated requirement or if the consolidated requirement was suitable for a small-business award. Consequently, both the past procurement history and the ability of a small business to compete are key to determining whether a requirement is bundled. If both of these conditions are present, a proper bundling analysis — which demonstrates that the bundling is cost-effective — would be required before the acquisition could occur.

### Section 801 Bundling

Section 801 of the *National Defense Authorization Act for 2004* is the most recent legislation dealing with bundling and is implemented in *Defense Federal Acquisition Regulation* Part 207.120. This section defines consolidation of contract requirements as when an agency uses a single contract to satisfy two or more requirements that were previously acquired under separate smaller contracts lower in cost than the consolidated contract's total cost. As in *SBA* bundling, Section 801 bundling requirements do not apply if the requirements were procured together previously. However, if the requirement falls under Section 801's purview, then numerous considerations must be addressed in the acquisition strategy when the procurement is expected to exceed \$5 million.

These considerations include developing market survey requirements, analyzing possible alternate contracting approaches and the senior procurement executive determining that the consolidation is necessary and justified. The statute and regulation further address administrative convenience and savings by providing that such savings must be substantial in relation to the procurement's total cost before the consolidation is justified. The small-business personnel must conduct annual reviews to determine the impact that such consolidations have had on small businesses as both prime and subcontractors.

In many ways, these two provisions complement each other. Both apply only to newly consolidated requirements and have provisions that show concern for small businesses. The primary difference is what happens when a requirement is found to be bundled. If a requirement is bundled under the *SBA* definition, then the agency has a generalized requirement to conduct a bundling analysis. If a requirement is bundled under the Section 801 definition, the acquisition strategy must address some portions of the bundling analysis, for which specific guidance is provided.

### Competition in Contracting Act (CICA) Bundling

In addition to the statutory and regulatory requirements, a doctrine has developed where requirements bundling may run afoul of *CICA*. This notion of *CICA* bundling is a concept arising strictly from Government Accountability Office (GAO) bid protest decisions and is not contained in any acquisition statute or regulation. Since *CICA*'s passage, there have been tensions between agencies over requirements definitions and whether a particular definition hinders full and open competition. Over the years, GAO has issued numerous decisions in this area, including decisions where agencies have tried to combine requirements. However, in 2002, GAO started using the term bundling in these kinds of decisions and developed the *CICA*-bundling concept.

The case that actually established *CICA* bundling as a separate concept was Vantex Service Corp.'s challenge of a small-business set-aside to acquire portable latrine rental services and waste-removal services at Fort Campbell, KY. Fort Campbell had been acquiring these services as a package since the mid-80s. Vantex could perform the requirement's portable latrine portion but not the waste-removal portion. Because it could not bid on just the one requirement, it filed a protest alleging that the requirement was improperly bundled. The Army responded by arguing that it was administratively easier to award and handle one contract, that this requirement had a long history of being successfully fulfilled in this way and that the requirement still generated adequate

small-business competition. GAO ruled in the protestor's favor stating that, by keeping those bidders who could only perform one of the functions out of the competition, the Army violated *CICA*. GAO went on to hold that "administrative convenience" by itself would not justify bundling requirements. Rather, the Army would need to demonstrate that real savings resulted from combining the requirement.

The Vantex decision teaches many important points. First, the case establishes the distinct *CICA*-bundling concept. Second, although a procurement may not violate the *FAR* Part 2 bundling definition, it may still violate the *CICA*-bundling doctrine. In this regard, note that Fort Campbell had acquired the services on a combined basis in the past and that the procurement was a small-business set-aside. Either of these factors alone would keep the procurement from being bundled under the *FAR* and *SBA* definitions. That was not enough to sway GAO. Third, GAO makes it very clear that administrative convenience by itself will never justify combining requirements.

While GAO has now issued numerous decisions in this area, there is another case that is particularly noteworthy. The EDP Enterprises Inc. case involved a small-business set-aside competition among private offerors for the A-76 study for the Directorate of Logistics (DOL) at Fort Riley, KS. All DOL functions were combined into one package for proposals by the private bidders. Prior to the A-76 competition, EDP performed the food services work under a separate contract. EDP protested the consolidation of the food services work with the rest of the DOL functions in the A-76 study. EDP argued that this consolidation constituted improper bundling because EDP could not bid on the whole package of DOL functions but only on the food services portion. GAO agreed that this was bundling and looked to see if the Army had a proper justification for combining the requirements. The Army argued that this consolidation was in accordance with its long-standing doctrine where food services are grouped with the other logistics functions and that this grouping is, in fact, the way the Army organizes to go to war.

GAO rejected this argument and found the requirements grouping was improper *CICA* bundling. GAO's language on this point is very revealing: "We do not question the agency's decision to classify food services as logistics support functions to be administered by the DOL. Rather, our concern is whether the agency has provided a reasonable justification of its needs in terms of including food services in the same Request For Proposal with base, vehicle and aircraft maintenance services. In our view, the fact that the agency is organized in a manner that results in overseeing the performance of all these

functions by one particular office, which may in itself be reasonable does not provide a basis for insisting that all these varied services be procured from one source."

The clear lesson from EDP is that, just as administrative convenience is an inadequate justification for combining requirements, so is the fact that a group of requirements may be within a single directorate's responsibility.

GAO has found adequate justification for a particular combination of requirements in only one case: Teximara Inc., which concerned the Air Force combining 14 requirements as part of an A-76 study. The Air Force — perhaps in light of the EDP decision — assembled a 114-page study that analyzed combining these requirements and demonstrated that economic savings would result from the consolidation. The study was performed by an in-house team of several individuals and took about 6 months to complete. While the Teximara decision provides an example of what constitutes proper justification for bundling requirements, the time, effort and expense necessary to do this kind of analysis on every potentially bundled requirement makes this solution problematic in many situations.

### Potential Courses of Action

In light of recent GAO case law in this area, the question becomes, "What alternatives may we offer our customers to help them get the goods and services they need in a timely and efficient manner?" I believe there are three possible courses, each of which has pros and cons that must be weighed depending on the procurement's specific circumstances. However, all these solutions require the customer and the contracting officer to have a solid understanding of the marketplace in which they are dealing. A thorough market survey, close contacts with the small-business community, and an understanding of any past procurement history are essential in advising our customers on the proper course.

The first alternative is to do the kind of economic, business case analysis that GAO has consistently referred to in their decisions and approved in the Teximara case. Assuming the study supports consolidating requirements, this approach will give customers the single contact they want in a way that is virtually immune from protest. The downside is the amount of time and money that this will cost the government. Most studies such as this would be done through contract, which still requires the customer to spend time and money. One possible way to help the customer would be for the U.S. Army Contracting Agency (ACA) to put a master contract in place for this service, where the contracting officer could write a delivery order and the study could be started quickly.

The second alternative involves restructuring the procurement. Under this approach, the solicitation would permit offerors to bid on single or combined requirements, including a possible bid on all requirements. Part of the evaluation criteria would be for those offerors who choose to bid on a combination of requirements to demonstrate the savings generated by combining requirements. This could include items such as cross-training, combining overlapping functions or using a common management approach. The source selection evaluation board would then evaluate the various approaches and recommend the approach or combination of approaches that would provide the best value to the government. In effect, this course of action transfers the effort that would be done upfront under the first alternative and asks the offerors to provide the kind of data and analysis we must have.

The obvious advantage is that this will save the upfront expenditure of resources that a customer is facing under the first alternative. However, there are two potential downsides to this approach. The first is the customer will not have any reasonable expectation ahead of time as to how their requirements will eventually be met. While it is easy to say that such an expectation should not matter because the customer will, in the end, get the best value, such an approach discounts the “human factor” that is crucial to good customer relations.

The second downside is that this will add an extra burden to what we expect from our evaluators. For a small number of requirements, this should not be a big problem and the approach could work very well. However, this approach will become more complex as the number of combined requirements increases. At some point, a procurement could bundle so many requirements that it would be impossible for an offeror to consider the possible combinations or for an evaluation team to judge them all.

Finally, there is one caveat to this alternative approach. There are no cases where this approach has been tested in a protest before GAO. However, it is the consensus of the ACA senior attorneys that, if done properly, this approach is very likely to survive any GAO protest. If there are any acquisitions in the pipeline where this approach looks attractive, please let me know because we are looking for the right case to try this method.

The third alternative is perhaps the simplest of all and, at the same time, the most radical. This approach entails issuing the solicitation in the normal course of business and

waiting to see if a bundling protest is filed. The obvious advantage of this approach is that the customer avoids all the resource issues and effort involved in doing a business study, while still retaining the possibility of getting a single or few awardees. The downside is that, should a protest be filed, it will in all likelihood be a winner and corrective action will have to be taken. Under the current rules, such a protest would have to be filed by the solicitation's closing date, so any challenge would be known early in the process.

In my discussions with attorneys and acquisition professionals, this approach is sometimes viewed as unseemly or an attempt to circumvent the rules. What these comments truly address is the fact that, as the keepers of the government acquisition process, we have an obligation to make sure all offerors are treated fairly and that the process we use appears to be a fair process. For that reason, before embarking on this course of action, the contracting officer must, at a minimum, do thorough market research and ensure that the procurement is properly publicized and vetted with the small-business community. When this is completed, contracting officers may decide to recommend this course of action if, based on all the facts and circumstances, they are satisfied that the requirements do not violate *CICA* and that they have a high degree of confidence that a protest is not forthcoming.

The problems with consolidating requirements are far more difficult and complex than one would expect from just reading the *FAR*. The *CICA*-bundling concept is an area that GAO continues to enforce strongly, which pressures our customers to make decisions and expend resources beyond what they would reasonably expect. This becomes even more difficult because the concepts behind *CICA* bundling are in many ways counterintuitive to what our customers believe makes good business sense. For this reason, it is imperative that we educate our customers in this area early in the process and that we take an active role as business advisors to steer them to the course of action that best meets their needs while staying within the law. To this end, early involvement by both the contracting officer and supporting legal counsel is crucial.

*Roger Neds is the Chief General Counsel, ACA, Northern Region Headquarters.*



## Contracting Successes

**WIN-T Contracting Team Receives Frank S. Besson Award.** The Warfighter Information Network-Terrestrial (WIN-T) Contracting Team was recently awarded the first-ever Frank S. Besson Award for Procurement Excellence-Contracting Team Category. U.S. Army Materiel Command (AMC) Commanding General GEN Benjamin S. Griffin presented the award at a ceremony held in June at AMC Headquarters, Fort Belvoir, VA.

Designed to support the Army's Future Combat Systems (FCS), the WIN-T program's original acquisition strategy and schedule were synchronized to fit the FCS needs with initial fielding of equipment in FY09. However, because of ongoing Southwest Asia operations exigencies and to meet the coalition force's immediate needs, the program's acquisition strategy was reassessed. Warfighters on the front lines and the battlefield need WIN-T capabilities much sooner than 2009.

Therefore, the Command, Control, Communications, Computers, Intelligence, Surveillance and Reconnaissance WIN-T Contracting Team successfully instituted a new and improved acquisition strategy to support mission-critical initiatives, including the global war on terrorism and *Operations Iraqi* and *Enduring Freedom*. The team changed the acquisition strategy to combine the current two prime contractor teams to develop a single conceptual architecture. The combination of architectures resulted in a System Design Review in January 2005.

This change in strategy is consistent with the Army Chief of Staff's vision for "bridging" the Current and Future Forces by allowing incremental WIN-T capabilities. By combining the efficiencies of two world-class commercial organizations, the Army will obtain the "best-of-breed" solution that combines the unique strengths inherent in each of the prime contractors' respective WIN-T architectures.

Partnering with industry and teaming across functional lines within the government enabled the WIN-T Contracting Team to confront a real and significant challenge: accelerating WIN-T capability delivery much sooner than the original date. Without effective teamwork, this challenge could not have been met. Because of the team's effectiveness, warfighters will see tactical network technology sooner than

originally planned. Moreover, the innovative technical approach resulting from the best-of-breed solution will ensure that the Army's FCS goals are met. It will also ensure that the warfighter is connected through an integrated communications network using a high-speed, highly secure and wireless network that will deliver voice, data and video.

**National Training Center (NTC) Logistics Support Contractor Receives Employer of the Year Award.** Vinnell Corp. Project Manager Dave Booze received California's 2005 Governor's Veterans Employer of the Year Award from Gov. Arnold Schwarzenegger at an awards ceremony held May 6, 2005. The California Employment Development Department and the Employer Advisory Council hosted the awards program to recognize employers for their exemplary practices in hiring and supporting our Nation's distinguished veterans. Vinnell proactively hires veterans, which has been great for successful business operations. The company's veteran population represents nearly one-half of its total employee population — 217 veterans employed on average. Outreach and recruitment efforts target military organizations, veteran representatives and veteran service organizations. Vinnell supports upward mobility and provides ample advancement opportunities to veterans.

**Mary Pat Shanahan Wins Prestigious Award.** Mary Pat Shanahan, Supervisory Contract Administrator at the Army Reserve Contracting Center's (RCC's) Coraopolis Satellite Office, supporting the 99th RRC, received the General Services Administration's Ida Ustad Award for Excellence in Acquisition at an award ceremony held in June in Washington, DC. This annual \$5,000 award recognizes an employee whose actions demonstrate or embody the "contract specialist as business leader/advisor" concept. Nominations for the award are open to all employees in the 1102 series throughout the government.

Additional contracting successes can be found online at <http://asc.army.mil/pubs/alt/default.cfm>.



## 2004 DOD Honorary Value Engineering (VE) Achievement Award

Under Secretary of Defense for Acquisition, Technology and Logistics Michael Wynne presented the annual DOD VE Achievement Awards during a ceremony held June 15, 2005. The Army Small Computer Program (ASCP) received this award in the program/project/product management category for the Army Enterprise Infostructure-Enterprise Software Consolidated-Microsoft® (MS) Enterprise License Agreement (ELA). Product Manager ASCP reports to the Program Executive Officer Enterprise Information Systems and supports all Army commercial information technology requirements.

Robin Baldwin, the MS ELA awarding contracting officer, and Amy Wray, MS ELA contract specialist at the U.S. Army Contracting Agency-Information Technology, E-Commerce and Commercial Contracting Center (ACA-ITEC4), were among the ASCP team members cited in the award. The ASCP/ITEC4 team was able to negotiate significant discounts based on volume and future purchase commitments.

The Army's Chief Information Officer has mandated using the MS ELA for all Army MS software purchases. The cost-avoidance to the Army resulting from the MS ELA is approximately \$300 million over 3 years.

## DAR Council Corner

There are more than 200 DOD civilian and military personnel who are part of the *Defense Acquisition Regulation (DAR)* committees and *Federal Acquisition Regulation (FAR)* teams. About 50 Army personnel support these committees and teams as permanent, rotational, supplemental advisors or ad hoc members. These personnel are from DA Headquarters (HQ), the U.S. Army Materiel Command (AMC) and its major subordinate commands, the U.S. Army Contracting Agency (ACA) and its regions, the U.S. Army Corps of Engineers (ACE) and the Military Surface Deployment and Distribution Command (SDDC).

Successful implementation of the statutes, executive orders, DOD policy and other regulatory directives in the *FAR* and

the *Defense Federal Acquisition Regulation Supplement (DFARS)* depends on these volunteers, who typically take on this responsibility as an additional duty. These Army personnel bring subject matter expertise, general policy advice and work experience in the following functional areas:

- Contracting
- Legal
- Quality assurance
- Environmental
- Government property
- Industrial base
- Information technology
- Finance
- Transportation
- Utilities
- Logistics
- Hazardous materials
- Critical safety

As committee and team members, these volunteers represent the Army and DOD in *FAR* and *DFARS* case deliberations. The committees' and teams' work are important to the entire DOD acquisition community.

The current Army *DAR* committee representatives (as of June 1, 2005) are:

Commercial Products/Practices	Zalerie Moore (Interim Chair) (HQAMC)
Construction/A-E/Bonds	Karen Thornton (HQACE)
Contract Administration	Zalerie Moore (HQAMC)
Contract Finance	Susan Orris (HQAMC) and Wallace Riggins (HQDA)
Contract Placement	Debra Parra (ACA-Information Technology, E-Commerce and Commercial Contracting Center (ITEC4) West)
Contract Services/A-76	Tom Watchko (HQACA) and Kathy Love (HQACA)
Cost Accounting Standards	Mark Gomersall (HQAMC)
Cost Principles	Mark Gomersall (HQAMC)
Debarment Suspension and Business Ethics	Christine McCommas (HQDA)
Environmental	Pete Stemniski (HQAMC)

Govt. Property/Plant Clearance	Joe Pieper (HQDA)	Cost Principles	Mark Gomersall (HQAMC)
Information Technology	Vera Davis (Chair) (ACA-ITEC4)	Insurance and Pension	Mark Gomersall (HQAMC)
Insurance and Pension	Dave Harrington (HQAMC)	Finance	Susan Orris (HQAMC)
International Acquisition	Steve Linke (HQDA)	<b>Acquisition Law</b>	
Labor/Equal Employment Opportunity	Gregory Noonan (Chair) (HQACE)	Legal Advisor	Vacant
Patents Data and Copyrights	Alan Klein (HQDA)	Rotational Member	
Pricing	Zalerie Moore (HQAMC)	Debarment Suspension and Business Ethics	Christine McCommas (HQDA)
Quality Assurance	Diane Meyer (HQAMC)	Labor	Gregory Noonan (Chair) (HQACE)
Research and Development	Susan Boblitt (AMC Research, Development and Engineering Command)	<b>Acquisition Technology</b>	
Simplified Acquisitions	Carmelia Rush (HQDA Defense Contracting Command-Washington (DCC-W))	Permanent Member	Stephanie Mullen (HQACA)
Small Business	Paul Gardner (Chair) (HQDA)	Other recent committee and team members who deserve the Army's thanks and appreciation are:	
Systems Acquisition	Zalerie Moore (HQAMC)	• John Bailey, HQAMC, Commercial Products/Practices and Cost Principles Committees.	
Taxes	Margaret Patterson (Chair)(HQDA)(Army Legal Member to <i>DAR</i> Council)	• Tom Bushnell, HQDA DCC-W, Contract Placement Committee.	
Transportation	Frank Galluzzo (SDDC) and Rosemary Kemp (SDDC)	• Brian Davidson, HQACA, Contract Reporting Committee.	
Utilities	Rafael Zayas (HQACE) and Don Juhasz (HQDA)	• Bob Friedrich, HQACA, Contract Services Committee and Acquisition Strategy Team.	
The current Army <i>FAR</i> team members (as of June 1, 2005) are:		• Luis Garcia-Baco, HQAMC, Ad Hoc Committee.	
<b>Acquisition Strategy</b>		• Marilyn Harris, Intelligence and Security Command, Contract Placement Committee.	
Permanent Member	Tom Watchko (Primary) (HQACA)	• Steve Jaren, HQDA, Ad Hoc Committee.	
	Kathy Love (Alternate) (HQACA)	• Alan Lee, HQAMC, Ad Hoc Committee.	
	Melissa Rider (Alternate) (HQACA)	• Rich Lovell, HQAMC, Ad Hoc Committee.	
		• Robert Paschall, Environmental Committee.	
Rotational Member			
Small Business	Paul Gardner (Chair) (HQDA)		
<b>Acquisition Finance</b>			
Rotational Member			
Cost Accounting Standards	Mark Gomersall (HQAMC)		

## Conferences

### Defense Logistics 2005

Supporting and sustaining a unified force on a nonlinear battlefield present significant challenges. To achieve victory in this arena we must ensure seamless warfighter support through